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Supreme Court of the United States

OCTOBER TERM, 1945

No. 814

MANHATTAN RAILWAY COMPANY and CHARLES FRANKLIN,
Petitioners,

vs.

THE CITY OF NEW YORK, THEODORE S. WATSON, and others, as a Committee for 7% Guaranteed Stock of Manhattan Railway Company; HAROLD PALMER, and others, as a Committee for 7% Guaranteed Stock of Manhattan Railway Company, and CHARLES FRANKLIN, and others, as Committee for Modified Stock of Manhattan Railway Company, and CHEMICAL BANK & TRUST COMPANY,
Respondents.

BRIEF OF THE CITY OF NEW YORK IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

February 14, 1946.

JOHN J. BENNETT,
Corporation Counsel,
Solicitor for Respondent,
The City of New York.

LEO BROWN,
BENJAMIN OFFNER,
of Counsel.

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BRIEF OF THE CITY OF NEW YORK IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Preliminary Statement

Petitioner Charles Franklin, as attorney for Manhattan Railway Company (hereinafter called "Manhattan"), seeks review of an order of the Circuit Court of Appeals, Second Circuit, which affirmed an order of the District Court dismissing his petition for an additional allowance in the Interborough-Manhattan receivership proceeding (R. 98, 106). The Circuit Court wrote an opinion (R. 105) as did the District Judge (R. 95-97).

Mr. Franklin received allowances totalling $92,500, exclusive of disbursements, in the receivership proceeding. Upon a previous application, in which he sought an additional allowance of $325,000, he was awarded $15,000. The award was affirmed by the Circuit Court of Appeals and Mr. Franklin's petition for certiorari was denied by this Court, *Franklin* v. *City of New York,* 144 F. (2d) 571 (1944), cert. den. 324 U. S. 847 (1945). Here, Mr. Franklin sought an additional allowance of $310,000 (the difference between the amount he requested and the amount allowed on the prior application), payable either out of the funds reserved for Manhattan Stock under the Interborough-Manhattan Unification Plan, or out of the receivership estate, *i. e.,* by the City of New York (R. 30-31).

Summary Statement of Facts

(1)

The history of the Interborough-Manhattan receivership proceeding, the nature of the legal relations among Interborough, Manhattan, their respective security holders and the City of New York, and the principles governing allowances to attorneys in the proceeding, including Mr. Franklin, are set forth in *American Brake Shoe & Foundry Co.* v. *Interborough Rapid Transit Co.,* 98 F. (2d) 72 (1938); *Manhattan Railway Co.* v. *Central Hanover Bank & Trust Co.,* 99 F. (2d) 789 (1938), cert. den. 306 U. S. 641 (1939); *Murray* v. *Roberts,* 103 F. (2d) 889 (1939); *American Brake Shoe & Foundry Co.* v. *Interborough Rapid Transit Co.,* 122 F. (2d) 454 (1941), cert. den. *sub nom Manheim* v. *Merle-Smith,* 315 U. S. 801 (1942); *Palmer* v. *Watson,* 122 F. (2d) 598 (1941); *Franklin* v. *City of New York, supra,* 144 F. (2d) 571, cert. den. 324 U. S. 847, and in the interest of brevity will not be restated here.

(2)

In the receivership proceeding the Manhattan Receiver and the Trustee of the Manhattan Consolidated 4% Mortgage were represented by separate counsel from the outset (Record on Appeal, *Franklin* v. *City of New York, supra,* 144 F. (2d) 571, cert. den. 324 U. S. 847, fol. 6639).* The Manhattan Consolidated 4% Bondholders' (Merle-Smith) Committee, the Palmer Committee for Manhattan 7% Stock, and the Trustee of the Manhattan Second Mortgage all intervened early in the proceeding and each was represented by counsel (*ibid.*, fols. 6639-6640). All of these received allowances (*ibid.*, fols. 349-360, 482-483). On November 11, 1932, Mr. Franklin was elected Manhattan's general counsel, and on January 30, 1933, he became its solicitor. He also served as counsel to the Manhattan 5% Stockholders' Committee until 1938, and from then on as co-counsel (*ibid.*, fols. 362, 366, 6640; see also, *Franklin* v. *City of New York, supra,* 144 F. [2d], at p. 572).

Mr. Franklin received allowances approved by Judge Mack, payable out of the receivership estate, for his services in connection with keeping the Manhattan corporate organization alive, aggregating $22,500 (Franklin Record, fols. 6619, 6708-6710). Judge Patterson made an allowance of $70,000 to Mr. Franklin and his co-counsel for services rendered on behalf of the Manhattan 5% Stock Committee, of which Mr. Franklin received $35,000 (*ibid.*, fol. 3025). This allowance was paid out of amounts allocated to the Manhattan 5% stockholders under Art. Six, par. (6), of the Interborough-Manhattan Unification Plan (*ibid.*, fols. 6750-51, 6758-59; *Franklin* v. *City of New York, supra,* 144 F. [2d], at p. 572).

Thereafter, Judge Patterson allowed Mr. Franklin $20,000 in full for his services in the receivership cause, payable out of the receivership estate, pursuant to Art.

* This record on appeal is part of the instant record (R. 101), and will hereinafter be referred to as the "Franklin Record".

Six, par. (8) (d), of the Unification Plan (Franklin Record, fols. 335, 356, 358-59, 6759-62; *Franklin* v. *City of New York, supra,* at pp. 572-73). On an appeal taken by Mr. Franklin from this order this allowance was increased to $35,000 (*Franklin* v. *City of New York, supra,* at p. 574). Thus, Mr. Franklin has received allowances totalling $92,500 under the Unification Plan.

The Pleadings

1. The Petition.

The petition purported to state three causes in equity. The claim for an additional allowance is based upon the very same services for which Mr. Franklin has already been compensated and which were before the Courts in his prior applications.

In the first cause Mr. Franklin sought to have the District Court adjudge that he have a first lien in the amount of $310,000 upon the funds reserved under the Unification Plan to the Manhattan 5% and 7% Stock, as compensation for his services alleged to have been rendered on behalf of Manhattan and its stockholders; or, in the alternative, that the Court determine the reasonable value of those services and declare a lien on the reserve funds in the amount so determined (R. 4-20).

In the second cause a similar lien was sought against the unmortgaged real estate and other assets formerly belonging to Manhattan and conveyed to the City of New York pursuant to the Unification Plan, including the so-called Retained Assets which were distributable under the Plan as part of the estate (R. 20-22). The first and second causes are identical as to the services for which compensation is sought and in the amount claimed; they differ only with respect to the funds and property against which the liens are to be enforced.

In the third cause the District Court was asked to reform the Unification Plan so that it should contain provisions

by which Mr. Franklin's alleged contracts with Manhattan for his compensation for legal services should be assumed by the City of New York or be paid out of the amounts allocated to Manhattan stockholders under the Unification Plan. The right to the relief was alleged to be "upon the ground that due to mistake and unskillful draftsmanship, inadequate and inappropriate language was used in said Plan * * * contrary to and in violation of the agreement of the parties in interest" (R. 22).

2. The City's Motion.

The City moved to dismiss the petition upon the grounds (1) that it failed to set forth facts sufficient to entitle Mr. Franklin to the relief sought, and (2) that existing decrees rendered on the merits and determining the same issues barred the granting of the relief sought in the petition (R. 80-81).

3. Answer of Manhattan 7% Stock Committee.

The Manhattan 7% Stockholders' (Watson) Committee filed an answer in opposition to the petition. It set forth the orders and decrees of the District Court and the Circuit Court fixing Mr. Franklin's allowances, and alleged that these orders and decrees were *res judicata* as to the relief sought by Mr. Franklin against the reserve funds (R. 41-45).

Apparently Mr. Franklin has completely abandoned the second and third causes in equity. For he has not assigned error to the Circuit Court's affirmance of the dismissal of his petition as to these causes (see Petition for Writ, pp. 7, 8-9). This is also apparent from his brief in support of the petition for a writ (see pp. 10-12). He seeks to have this Court review only the dismissal of the first cause in which he sought an additional allowance chargeable to the funds allocated to Manhattan stockholders.

ARGUMENT

Allowances to Mr. Franklin were governed by the Unification Plan, under which all allowances to counsel were to be fixed by the District Court. The Circuit Court correctly held that the allowances made to Mr. Franklin constitute a final determination of the compensation to which he was entitled and bar him from obtaining any further allowance.

(a)

Allowances to attorneys in the Interborough-Manhattan receivership proceeding were governed by the provisions of the Unification Plan. As the Court pointed out in *Franklin* v. *City of New York, supra,* 144 F. (2d), at page 573, though the Plan provides in Art. Six, par. (3), that the City shall assume Manhattan's obligations under "Existing Agreements", this latter term is defined in definition (12) as excluding "contracts or agreements relating to the employment of counsel". Moreover, Art. Six, par. (5) (d), provides that the City will not assume and pay

> "Any legal * * * expenses or compensation of * * * the Manhattan Railway Company, other than any allowance which may be made by the District Court pursuant to the provisions of subdivision (d) of paragraph (8) of this Article."

Art. Six, par. (8) (d), provides for compensation for services rendered to, and to be paid from, the receivership estate. The portion of the paragraph specifically referring to Mr. Franklin provides that the City will pay:

> "* * * allowances, *if any, which may be made by the District Court* to the solicitor and general counsel of the Manhattan Railway Company for his services and disbursements in the receivership and related proceedings * * *." (Italics ours.)

Art. Six, par. (6), also contains provision for compensation to Manhattan for its legal expenses, to be paid from funds allocated under the Plan to Manhattan stockholders. The applicable portion of the paragraph provides:

> "The legal, accounting, engineering and other expenses and compensation of the Manhattan Railway Company (except as otherwise provided in subdivision (d) of paragraph (8) of this Article with respect to the solicitor and general counsel of the Manhattan Railway Company), *whether heretofore or hereafter agreed to be paid or whether heretofore or hereafter incurred* in the receivership proceedings or in securing assents to the Plan or in the negotiation and consummation of the Plan or otherwise, *all subject to the approval of the District Court,* shall be paid out of the Corporate Stock allocable under Article Four of the Plan to the Guaranteed 7% Stock and the Modified Guaranteed 5% Stock of the Manhattan Railway Company in the proportions determined by the District Court." (Italics ours.)

These are all of the provisions of the Unification Plan which controlled the allowances made to appellant.

Mr. Franklin himself recognized that his right to compensation was governed by these provisions of the Unification Plan. For his applications for allowances were based upon them, as were the allowances which were made by the District Court. The Circuit Court pointed that out in its opinion (144 F. [2d], at pp. 572-73). Despite these adjudications Mr. Franklin now seeks to obtain an additional allowance based on alleged contracts with Manhattan, and attempted to impose this charge either upon the City or upon the funds reserved for Manhattan stockholders. This is nothing more than a reargument of the very position which he took in the prior appeal. In its decision in that case the Circuit Court definitively disposed of Mr. Franklin's rights against the City and the Manhattan stockholders.

Referring to the pertinent provisions of the Unification Plan, that Court said with respect to the City's liability (144 F. [2d], at p. 574):

> "In our opinion these provisions plainly indicate that the City was not to assume Manhattan's contracts for legal expenses but agreed only to pay 'allowances, if any which may be made by the District Court'; and that such allowances must be made in accordance with the principle which controls the allowance of counsel fees in receivership cases, namely, benefit to the receivership estate."

As to the Manhattan stockholders, the Circuit Court held that they could not be charged with liability for these services and that Mr. Franklin could not obtain an allowance for them under Art. Six, par. (6), of the Unification Plan. The Court said (144 F. [2d], at p. 574):

> "This [Art. Six, par. (6)] does not mean that Manhattan's contracts for legal fees are to be enforced against its stockholders. As this court held with respect to similar language in Article Six relating to the legal expenses of Contracting and Assenting Committees, the amount of the allowance must turn upon 'what was done that was beneficial and what that was worth'. Palmer v. Watson, 2 Cir., 122 F. 2d 598, 600. If Manhattan had assets of its own, the case upon which counsel heavily relies, In re Hollis Lumber Co., 2 Cir., 55 F. 2d 898, would be applicable, but here the funds sought to be charged belong to the stockholders as such; they do not take them by distribution of corporation assets. Hence if Mr. Franklin were entitled to be paid anything under paragraph (6) he would be limited to the amount of benefit his services not otherwise compensated had conferred upon Manhattan stockholders. But it seems to us clear that he can take nothing under paragraph (6)."

This Court denied certiorari (324 U. S. 847).

(b)

There is nothing in §§ 474 and 475 of the Judiciary Law of New York to justify a reconsideration of Mr. Franklin's allowances.

Section 474 provides that the compensation of an attorney is governed by agreement. Here, the agreement is in the Unification Plan.

Section 475 of the Judiciary Law provides as follows:

> "From the commencement of an action, special or other proceeding in any court or before any state or federal department, except a department of labor, or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action, claim or counterclaim, which attaches to a verdict, report, determination, decision, judgment or final order in his client's favor, and the proceeds thereof in whatever hands they may come; and the lien cannot be affected by any settlement between the parties before or after judgment, final order or determination. The court upon the petition of the client or attorney may determine and enforce the lien."

This statute is not applicable here for the following reasons:

1. Manhattan was not a plaintiff and asserted no cause of action in the receivership proceeding.

2. It was not a defendant whose answer contained a counterclaim.

3. There are no funds or assets belonging to Manhattan (with which the contracts were allegedly made) upon which a lien may be asserted. As the Circuit Court said in *Franklin* v. *City of New York*, *supra* (144 F. [2d], at p. 574):

> "* * * here the funds sought to be charged belong to the stockholders as such; they do not take them by distribution of corporation assets."

See, also, *American Brake Shoe and Foundry Co.* v. *Interborough Rapid Transit Co., supra,* 122 F. (2d) 454, cert. den. *sub nom. Manheim* v. *Merle-Smith,* 315 U. S. 801; *Palmer* v. *Watson, supra,* 122 F. (2d), at p. 600.

4. Neither in his first cause (wherein he seeks to enforce a lien against the funds reserved to Manhattan stockholders) nor in his second cause (wherein he seeks to enforce a lien against property owned by the City) does Mr. Franklin seek to charge a party with whom he had an agreement for compensation.

5. The last sentence of the statute, providing for a determination by the Court of the amount of the lien, is precisely what was done by the District and Circuit Courts, in determining what allowances were to be made to Mr. Franklin and out of which funds, established by the Plan, they were payable.

6. Finally, the Circuit Court has correctly disposed of this contention in saying (R. 105):

> "Legal fees in the receivership are governed not by any general equitable principles, but by the Plan itself; and our earlier interpretation of its terms is final. The claims themselves being barred, the assertion of a lien as security for their collection must obviously fail."

(c)

Realizing that the provisions of the Unification Plan and the allowances made to him constitute a complete bar to his obtaining an additional allowance, Mr. Franklin attempted, in the third cause of his petition, to obtain a reformation of the Plan in such a way as to accomplish what the Courts have thus far denied him. He asked the Court to reform the Plan so that the City or the Manhattan stockholders be obliged to pay him the unpaid balance claimed to be due under his alleged contracts with Manhattan, amounting to $310,000 (R. 22-30; see also R. 57-58).

The Circuit Court held that Mr. Franklin had failed to make out a case for reformation (R. 105). Mr. Franklin has not assigned error in this holding and seeks no review of it here. Consequently further discussion of this issue is unnecessary.

CONCLUSION

Petitioner has no meritorious complaint. He has received allowances aggregating $92,500 in the proceeding. Three separate District Judges passed on those allowances, a Special Master heard voluminous testimony, the Circuit Court has twice carefully reviewed the whole record, and this Court denied certiorari. After such careful consideration no further review by this Court is warranted.

The petition for a writ of certiorari should be denied.

February 14, 1946.

Respectfully submitted,

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